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STATE FOR ISN/CB, VCI/CCA, L/NPV, IO/MPR
SECDEF FOR OSD/GSA/CN,CP>
JOINT STAFF FOR DD PMA-A FOR WTC
COMMERCE FOR BIS (BROWN, DENYER AND CRISTOFARO)
NSC FOR LUTES
WINPAC FOR WALTER

E.O. 12958: N/A

TAGS: [PARM](#) [PREL](#) [EIND](#) [OPCW](#) [CWC](#)

SUBJECT: CWC: INDUSTRY CLUSTER MEETINGS, JULY 9, 2009

REF: A. TS NON-PAPER ON 2A/2A* LOW CONCENTRATIONS
QUESTIONNAIRE RESULTS (07/08/09)
[1](#)B. FACILITATOR'S DRAFT DECISION ON 2A/2A* LOW
CONCENTRATIONS (07/08/09)
[1](#)C. TS NON-PAPER ON OCPF DECLARATION ENHANCEMENTS
(07/01/09)
[1](#)D. THE HAGUE 362
[1](#)E. STATE 52991

This is CWC-40-09.

[1](#)1. SUMMARY: Both industry consultations on July 9 included presentations and discussion of new technical data gathered to aid consultations, along with a continuation of discussions from the May consultations on low concentration limits for Schedule 2A/2A* chemicals and enhancements to the OCPF declaration regime. Little progress was made in either consultation, and no further steps were taken to advance or formulate draft decisions for the Schedule 2A/2A* or OCPF consultations. Though some new views were brought forward, delegations primarily repeated long-held positions. END SUMMARY.

2A/2A* LOW CONCENTRATIONS

[1](#)2. Facilitator Giuseppe Cornacchia (Italy) opened the session by introducing the new Executive Council Vice-Chair for Industry Issues, Sudanese Ambassador Abuelgasim Idris, and then turned the floor over to Ken Penman (Senior Information Evaluation Officer, Verification Division), who provided a briefing on the responses to the voluntary questionnaire and the data contained in the associated Technical Secretariat (TS) non-paper (ref A). Penman noted that the TS so far has received responses from 21 States Parties, 15 of whom reported no Schedule 2A/2A* activity above the weight threshold. The remaining six States Parties provided responses accounting for fifteen plant sites, seven of which are currently declared and eight which are not. Nine currently-declared plant sites were included in the results in the non-paper based on inspection reporting alone. A total of

twenty-four plant sites are included in the results. Results on eight new plant sites came from three States Parties, two of which have never declared any Schedule 2A/2A* plant sites. Based on open-source information, the TS believes there could be an additional 10-15 plant sites. (DEL NOTE: The Chinese delegate later confirmed to Delreps that China had not responded to the questionnaire as it already declares all of its Schedule 2A/2A* facilities, which would account for at least some of the nine currently-declared sites not included in questionnaire responses. END NOTE.)

13. Follow-up discussions on the questionnaire results revealed predictable and long-held positions. The UK led off the discussion by commenting that it wants maximum transparency and visibility. Gaining sites is attractive while losing sites is unattractive. The UK noted that some delegations may view the information as partial (given that the results did not account for nine of the presently-declared plant sites), but contended that the bulk of activities are represented. Addressing Figure 2 of the non-paper, the UK indicated it favors the "left side" of the table, i.e., the lower concentration thresholds, the lowest of which (less-than-or-equal-to five percent) would capture an additional eight plant sites.

14. The UK comment regarding visibility and "favoring the left side" was echoed in varying degrees by Australia, the Netherlands, Switzerland, Italy, Ireland and Finland. South Africa noted that it regulates at 10% and is flexible to go much lower, but inherently believes this is a political issue. South Africa emphasized that these are scheduled chemicals and should be dealt with due to their relative toxicity. South Africa commented that, compared to the ongoing discussions on OCPFs, significant gains can be achieved by setting a common threshold for Schedule 2A/2A* chemicals with a small impact.

15. China noted that a 0.5% threshold would add eight plant sites, bringing the total of Schedule 2 plant sites to 169 (a 5% increase). Since only 21 States Parties responded and over forty States Parties engage in declarable industry activity, the increase of Schedule 2 plant sites may be upwards of 8%.

16. Delrep commented that the questionnaire results are not particularly surprising and that new sites are still captured up to 10%. Del further called for more flexibility and compromise on all sides. Germany noted its flexibility, supported the U.S. position and commented that the questionnaire data is partial because not all PFIB sites have been included. Thus, it is impossible to determine what is gained or lost without all the sites included. Furthermore, Germany argued that visibility alone is not an aim in and of itself and that the survey was not necessary if the goal is to capture the maximum number of plant sites.

17. Apparently aware that its interventions in the May consultations were confusing to many delegations, Japan attempted to clarify its position and generally explain its goal in the "road map" tabled during the previous meeting. Japan noted that the information in the non-paper alone does not set the grounds for a regulatory threshold; the first step still should be to set the regulatory objectives. Although this discussion was more concise than the May

intervention, it did not appear to garner any more support from other delegations.

¶8. Halfway through the consultation, Cornacchia commented that the group's "inclination is to the left" where more plant sites are gained. In an attempt to make progress, he suggested narrowing the threshold under consideration to a reasonable range, proposing 0-10% and asked if there was any opposition to this. When no one else spoke up, Delrep stated that the U.S. would not go against consensus on narrowing the threshold range under discussion; however, having previously noted the United States' flexibility to move from 30% down to 10%, Delrep pointed out that Cornacchia's proposed range of 0-10% greatly constrained any further U.S. flexibility. Japan quietly did not support the proposal, reiterating its mantra that a logical reason is needed to define a particular range.

¶9. The consultation took an unexpected turn when Russia proposed returning to earlier discussions on dealing with each of the three chemicals individually, explaining that they are too unique to be treated collectively. Russia acknowledged that, though the proposal is not new, it may be time to reconsider this approach. Japan supported the proposal. Germany commented that the Russian proposal may be an easier solution to addressing the issue. Italy reminded delegations that this approach was tried and rejected by States Parties during the previous consultations facilitated by Cornacchia's predecessor. Though Italy favored this path in the past, it would only lead to delay at this point. Delrep commented that the U.S. had tabled a differentiated approach previously, which had been rejected. Delrep stated that that, if the Russian proposal can advance current discussion, the U.S. might reconsider it. However, Delrep stressed that, while the U.S. appreciates the interest of examining the issue logically, it is time to make a decision. Sharing Italy's concerns, the UK (echoed by Australia, Ireland and the Netherlands) expressed its preference is to handle all three chemicals simultaneously, it can support splitting them up if it is quicker. However, doing so would not change the UK's view on appropriate thresholds.

¶10. Cornacchia then raised his draft decision (ref B), and a brief discussion ensued. He then solicited views on forwarding the draft decision to the Executive Council as a Conference Room Paper, in order to give some official status to the on-going consultations, which he explained so far has relied on informal non-papers. The U.S., Australia and the UK supported Cornacchia's proposal, but India, Japan and Russia opposed it, so Cornacchia decided not proceed with asking the TS to make the draft decision a Conference Room Paper.

OCPF DECLARATION ENHANCEMENTS

¶11. Facilitator Marthinus van Schalkwyk (South Africa) began his consultation with a brief introduction before asking Bill Kane (Head, Industry Verification Branch) to present the most recent TS informal paper on the R factor (ref C). Kane noted that the charts in the paper don't reveal the whole picture, specifically that inclusion of an R factor shifts sites within each of the three groupings (i.e., high, medium and low relevance). In 2008, thirty of the 118 inspected sites (25%) were in the low relevance category and, with the R factor included, 50% of the 118 plant

sites would be in the low relevance category.

¶12. India followed Kane's remarks with a lengthy intervention on its objection to the proposed approach. Citing paragraph 9.65 of the report of the Second Review Conference (RevCon), India commented that the RevCon mandated that additional data must not impose any additional declaration obligations. Utilization of voluntary submission of R-factor data, however, would adversely impact States Parties that do not adopt the proposal because it would result in these States Parties having higher A14 scores. India proposed tweaking the existing A14 system rather than instituting new obligations.

¶13. Both China and Iran also cited the report of the Second Review Conference in justifying their concerns with the proposal. China commented that the additional data brings an additional declaration burden and that the proposal needs to be looked at in conjunction with the OCPF plant site selection methodology.

¶14. Brazil, France, the UK, the Netherlands and Australia commented that provision of the data imposes no real burden and should not be difficult. The UK and Australia both noted that their chemical industry has responded positively to including the additional data in their declarations. The UK Qadditional data in their declarations. The UK opined that it is more burdensome to continue inspecting less relevant sites. Interestingly, the Netherlands announced that it has begun calculating R-factor scores for all its OCPF sites to ascertain the impact, and encouraged other States Parties to undertake the same analysis.

¶15. Delrep commented that States Parties must understand the impact of proposed changes before agreeing to adopt them, given that the proposal represents a permanent addition to declaration forms for thousands of facilities. The proposal should be adopted only if there are clear and significant improvements to the selection process; at this time, there is no clear indication any improvement would be substantial. Delrep also noted that probability of selection is a factor of both the A14 score and geographic distribution, and that the impact of the R factor may be tempered depending on the geographic distribution calculation.

¶16. Germany repeated its view that, for the sake of simplicity, the proposed declaration changes could be reduced to one field indicating whether or not the process is continuous (as opposed to the four fields included in the current proposal). Germany encouraged others to consider its proposal and comment on it.

¶17. Cuba cited paragraph 8 of the non-paper, observing that the analysis conducted to date has been only for a small fraction of declared OCPF sites (118 out of 3,800). Cuba and France both called for a simulation of all declared sites to get a better picture of the impact of R-factor data. Kane and van Schalkwyk agreed to consider the request. Peter Boehme (Senior Industry Officer, IVB) reminded delegations that the issue is only about probability, not certainty. There will always remain some probability, no matter how slight, of selecting a low relevance site, such as a urea plant, for inspection.

¶18. Van Schalkwyk noted the difficulty in moving forward at this time and in basing conclusions on an evaluation of 118 sites. Surprisingly, he went

on to state that nothing could be done if States Parties choose to institute the proposal voluntarily or if the TS uses the additional information in selecting sites for inspection. India and France -- although France supports the proposal -- responded that discussions should avoid encouraging implementation of the proposed changes voluntarily or on an ad hoc basis, either by States Parties or the TS.

¶19. Van Schalkwyk concluded by observing that while there is some strong support for adopting the R factor, there also is doubt that it constitutes real change. Countering India's opening remarks, the facilitator noted that changes to the declaration system can be implemented if they solve a problem. The facilitator agreed to explore running a simulation for all 3,800 sites but commented that if this were done, States Parties must accept that it only represents a guess. The facilitator decided not to pursue a draft decision until he can ensure there will not be a substantive fight over its contents.

¶20. BEIK SENDS.

FOSTER